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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,765	04/14/2004	James Russell Miller	25163.2.16	6735
40320	7590	09/16/2005	EXAMINER	
BURNS & LEVINSON LLP 1030 15TH STREET NW, SUITE 300 WASHINGTON, DC 20005-1501			DOSTER GREENE, DINNATIA JO	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 09/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,765

Applicant(s)

MILLER, JAMES RUSSELL

Examiner

Dinnatia Doster-Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(f) he did not himself invent the subject matter sought to be patented.

Claim 1 is rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. The patent issued to **“John J. Miller”** (U.S. Patent No. 6,676,617) discloses an iliac crest belt assembly adapted for interlocking attachment to a body brace having a back element shaped to fit about a person's lower back region, the iliac crest belt assembly comprising:

(A) an elongated strip (300) formed from a substantially rigid material, (2) having a center portion (303) and first (304) and second ends (305) and (3) comprising an inner layer of relatively compressible material attached to the substantially rigid material (col. 7, lines 12-25),

(B) adjustment and locking elements (309) for adjusting the fit of and locking the belt assembly about the waist of the person, the adjustment and locking elements being disposed in substantially corresponding locations on the first and second ends, respectively, of the elongated strip, and

(C) fastening means (301), attached to the center portion of the elongated strip, for removably fastening the belt assembly to the first back element such that when locked about the waist of the person and fastened to the back element of the body

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brace, the belt assembly interlocks with the back element so as to impart stabilizing force from the elongated strip through the fastening means to the back element, wherein:

(D) the elongated strip is configured to, when the belt assembly is locked about the waist of the person: (1) engage the iliac crests of the person with adjustable tension and (2) encircle the waist of the person with an adjustable circumference and tension, with the center portion positioned substantially against the lumbar spinal region of the person and the first and second ends positioned against the front of the person, so that stabilizing force is imparted from the elongated strip through the fastening means to the back element (col. 6, lines 58 – col 8, line 33).

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

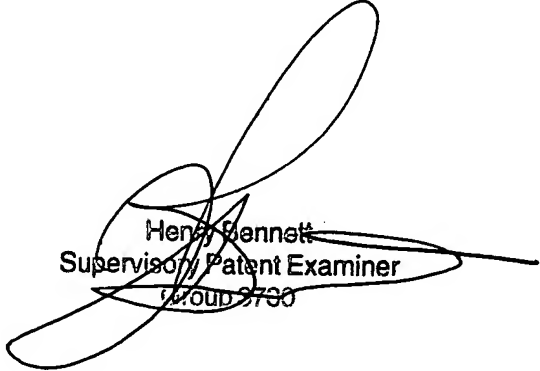
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg



Henry Bennett
Supervisory Patent Examiner
Group 3730